

1 Hon. Thomas S. Zilly
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10 UNITED STATES DISTRICT COURT
11 WESTERN DISTRICT OF WASHINGTON
12 AT SEATTLE

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ESTHER HOFFMAN, SARAH) Case No.: 2:18-cv-01132 TSZ
DOUGLASS, ANTHONY KIM, IL KIM and)
DARIA KIM, on behalf of themselves and on) TRANSWORLD SYSTEMS INC.'S
behalf of others similarly situated,) OPPOSITION TO PLAINTIFFS'
Plaintiffs,) MOTION TO COMPEL DISCOVERY
v.) Note on Motion Calendar:
TRANSWORLD SYSTEMS) April 22, 2022
INCORPORATED, *et al.*,)
Defendants.) ORAL ARGUMENT REQUESTED

**DEFENDANT TRANSWORLD SYSTEMS INC.'S
OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DISCOVERY**

1 Transworld Systems Inc. (“TSI”) opposes Plaintiffs’ Motion to Compel Discovery (Doc.
 2 276) (“Motion to Compel”).

3 **I. INTRODUCTION**

4 Plaintiffs’ Motion to Compel—their third discovery motion in as many months—is without
 5 merit. TSI timely asserted proper objections to overbroad and largely irrelevant discovery
 6 requests, objected to Plaintiffs’ improper “cloned discovery” where appropriate, and invoked
 7 applicable attorney client privileges and other privileges that protect confidential information
 8 belonging to the Consumer Financial Protection Bureau (“CFPB”) from disclosure in discovery.
 9 For all those reasons more fully explained below, Plaintiffs’ Motion to Compel should be denied.

10 **II. RELEVANT PROCEDURAL HISTORY**

11 On July 28, 2021, Plaintiffs served their Second Interrogatories and their Second Requests
 12 for Production of Documents on TSI (Plaintiffs’ “Second Set of Discovery”). TSI timely
 13 responded on September 10, 2021. Six months later and barely a month before the close of
 14 discovery, on March 8, 2022, Plaintiffs for the first time requested a discovery conference
 15 regarding TSI’s responses. Plaintiffs complained that TSI’s answers to 4 Interrogatories and 10
 16 Requests for Production were non-responsive, or the asserted objections to the discovery were
 17 inappropriate, or documents were improperly withheld for privilege.

18 Following the parties’ LCR 37(A)(1) conference, TSI served its First Amended and
 19 Supplemental Responses to Plaintiffs’ Second Set of Discovery in a good faith attempt to address
 20 Plaintiffs’ belated discovery dispute. TSI’s amended and supplemental responses resolved some,
 21 but not all, of Plaintiffs’ concerns. On April 4, 2022, Plaintiffs filed the instant Motion to Compel
 22 regarding TSI’s answers to 2 of the Interrogatories and 6 of the Requests for Production.

23 **III. STATEMENT OF LCR 37(A)(1) COMPLIANCE**

24 Plaintiffs’ current discovery dispute initially centered on TSI’s answers to 4 Interrogatories
 25 and 10 Requests for Production to Plaintiffs’ Second Set of Discovery. The parties met and
 26 conferred in good faith by Zoom conference on March 17, 2022. That conference led to TSI’s
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1 agreement to amend and supplement its responses, subject to any applicable objections or
 2 privileges assertions. TSI supplemented its responses accordingly.

3 Plaintiffs now boldly aver that TSI's counsel—after engaging in the March 17 Zoom
 4 conference, agreeing to amend or supplement its written discovery responses, and then amending
 5 and supplementing its responses as agreed—nevertheless “*refused* to meet and confer.” *See*
 6 Motion to Compel at p. 9 (emphasis added). Utter nonsense. Plaintiffs misrepresent the facts.

7 On March 28, 2022, following TSI's amended and supplemental responses, undersigned
 8 counsel responded, in detail and by separate paragraphs, to any remaining issue regarding
 9 Plaintiffs' Second Set of Discovery and reiterated the willingness to confer further if necessary:

10 We are in receipt of your March 24, 2022 letter outlining Plaintiffs' present
 11 discovery disputes and requesting confirmation that we are at an impasse on the
 12 items you have specified. *Although we remain available to discuss, we agree we*
are at an impasse as to each item you have raised and that further conference in
this regard is unnecessary. Please note the following: [a brief analysis of TSI's
 13 position on each amended and supplemental Request for Production and
 14 Interrogatory at issue followed]

15 In light of the foregoing, and *unless we hear from you otherwise*, we do not plan on
 attending the conference previously scheduled for this afternoon.

16 *See* Exhibit I to the Motion (Doc. 277, pp. 83-84) (emphasis added).

17 Plaintiffs' counsel agreed to disagree. His email in reply stated: “[w]e cannot force you to
 18 meet and confer. It appears we are at an impasse. I will cancel the meeting.”

19 Plaintiffs' counsel's assertion that TSI's counsel “refused” to engage in a discovery
 20 conference is another attempt by opposing counsel to distort the truth and disparage undersigned
 21 counsel and bias the Court against TSI and its counsel. The parties met and conferred on March
 22 17. As discussed, and agreed at the conference, TSI amended and supplemented its responses to
 23 Plaintiffs' Second Set of Discovery. If, upon receipt of those responses, Plaintiffs' counsel truly
 24 believed further conference was necessary to satisfy the parties' LCR 37(A)(1) obligations,
 25 counsel should have heeded the undersigned's stated willingness to continue discussions. Having
 26 failed to do so, it is Plaintiffs (not TSI) who have neglected their LCR 37(A)(1) obligations, and
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1 Plaintiffs' Motion to Compel should be denied for that reason alone. *See, e.g., Pennick v. Dehven*,
 2 2019 WL 2208727, *1 (W.D. Wash. May 22, 2019) (denying plaintiff's motion to compel, in part,
 3 because the plaintiff failed to meet and confer).

4 TSI is anxious to get to the merits of this case, something Plaintiffs appear to be avoiding
 5 as much as possible.

6 **IV. STANDARD OF REVIEW**

7 As movant, Plaintiffs bear the burden of informing the Court why the discovery responses
 8 at issue are insufficient. *Nahum v. The Boeing Co.*, 2020 WL 4261337, at *3 (W.D. Wash. July
 9 24, 2020), reconsideration denied, 2020 WL 4449714 (W.D. Wash. Aug. 3, 2020). A district
 10 court's "decision to deny discovery will not be disturbed except upon the clearest showing that
 11 denial of discovery results in actual and substantial prejudice to the complaining litigant." *Hallett*
 12 *v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

13 **V. LAW AND ARGUMENT**

14 • **Requests for Production Nos. 38 and 39**

15 Paraphrasing Plaintiffs' Requests for Production Nos. 38 and 39, those Requests seek
 16 evidence that TSI complied with the terms of a September 18, 2017 consent order TSI entered with
 17 the CFPB¹ (hereinafter, the "CFPB Consent Order") by delivering a copy of the CFPB Consent
 18 Order to certain persons or entities "who have responsibilities related to the subject matter of the
 19 [CFPB Consent Order]."

20 Per its amended and supplemental responses, TSI objected to the Requests as overbroad
 21 for seeking documents not related to the Second Amended Complaint (Doc. 61) ("SAC") and
 22 disproportional to the needs of the case, particularly to the extent they seek documents relating to
 23 delivery of the CFPB Consent Order to TSI's board members and other persons who similarly had
 24 no direct involvement with any action or decision-making in servicing Plaintiffs' loans.² Subject

26 ¹ See *In Re Transworld Systems Inc.*, 2017 CFPBCO 0018 (9/18/2017).

27 ² In its original responses to those Requests, TSI also asserted statutory, attorney-client, and other privileges; those
 privilege assertions were removed from TSI's amended and supplemental responses to Request No. 38 and were meant

1 to those objections, TSI produced two things: (1) an acknowledgement of receipt of the CFPB
 2 Consent Order which was signed and dated by or on behalf of Patenaude & Felix, A.P.C. (“P&F”)
 3 (the collection counsel who represented the Defendant Trusts³ in collection litigation against
 4 Plaintiffs), and; (2) a report, generated from TSI’s electronic records, documenting 71 current and
 5 former TSI employees and/or managers’ acknowledged receipt of the CFPB Consent Order, and
 6 the dates of their acknowledgements.⁴

7 In their Motion to Compel, Plaintiffs contend first that TSI’s relevancy objections were
 8 waived because they were not asserted in TSI’s original answers. This argument is specious. TSI’s
 9 original [and supplemental] response objected to both Requests “as *overbroad* as seeking
 10 documents *not related* to the allegations in the SAC[.]” (emphasis added). These are plainly
 11 relevancy objections. *See United States v. Westinghouse Elec. Corp.*, 788 F.2d 164, 169-71 (3d
 12 Cir. 1986) (evaluating a subpoena challenged as overly broad under a “relevancy standard”).

13 Plaintiffs also contend TSI’s relevancy objections lack merit. Plaintiffs argue that because
 14 the CFPB Consent Order required TSI to obtain delivery acknowledgments, then every one of
 15 those acknowledgements (and every document relating to those acknowledgments) is relevant to
 16 their claims that litigation was pursued against them on missing loan documentation (*i.e.*,
 17 schedules).

18 Plaintiffs are overreaching. No provision of the Fair Debt Collection Practices Act
 19 (“FDCPA”), 15 U.S.C. § 1692, *et. seq.* or the Consumer Protection Act (“CPA”), RCW 19.86, *et*

21 to be removed from Request No. 39. In any case, TSI does *not* assert privilege as to any relevant documents responsive
 22 to either Request.

23 ³ The “Defendant Trusts” are each of the 6 statutory trusts that respectively own the 9 student loans owed by the
 24 Plaintiffs, as follows: National Collegiate Student Loan Trust 2004-2, National Collegiate Student Loan Trust 2005-2,
 25 National Collegiate Student Loan Trust 2005-3, National Collegiate Student Loan Trust 2006-1, National Collegiate
 26 Student Loan Trust 2006-3, and National Collegiate Student Loan Trust 2007-4.

27 ⁴ The report did *not* list each of the hundreds of TSI current and former employees who acknowledged receipt of the
 28 CFPB Consent Order. Instead, the report was explicitly limited to “relevant TSI managers and employees,” primarily
 29 within the TSI business unit pertaining to subservicing of the Defendant Trusts loans (even though the vast majority
 30 of them had no direct involvement in the servicing or collection of Plaintiffs’ or Washington residents’ loans). And
 31 TSI previously produced in discovery several months ago and in response to Plaintiffs’ First Requests for Production
 32 of Documents identical acknowledgment records for each TSI employee that executed or notarized any affidavit that
 33 was used in connection with the underlying collection actions against Plaintiffs.

1 *seq.* forming the basis of Plaintiffs' claims requires any person to acknowledge receipt of the CFPB
 2 Consent Order as a prerequisite to any loan servicing or collection activity in Washington, or
 3 otherwise renders any loan servicing or collection activity in the absence of such acknowledgment
 4 an illegal or deceptive act. Nor does the existence (or non-existence) of any such
 5 acknowledgement tend to prove (or disprove) that litigation was pursued against the Plaintiffs on
 6 missing loan schedules, which is the heart of Plaintiffs' claims.

7 Moreover, and perhaps most importantly, any obligation to obtain signed CFPB Consent
 8 Order acknowledgements arises strictly from an arguable contractual obligation TSI owed to the
 9 CFPB under the terms of what is essentially a settlement agreement. But Plaintiffs are indisputably
 10 not parties to the CFPB Consent Order. Nor are they the enforcers of the CFPB Consent Order—
 11 only the CFPB has that right. *See, e.g., Kalisz v. Am. Express Centurion Bank*, 2016 WL 1367169,
 12 *2 (E.D. Va. Apr. 5, 2016) (finding that that a consumer could not assert a violation of a CFPB
 13 consent order pursuant to “a well-settled line of authority from [the Supreme] Court establish[ing]
 14 that a consent decree is not enforceable directly or in collateral proceedings by those who are not
 15 parties to it even though they were intended to be benefited by it”) (citing *Blue Chip Stamps v.*
 16 *Manor Drug Stores*, 421 U.S. 723, 750 (1975)). *See also Mayall v. Randall Firm, PLLC*, 2017
 17 WL 3432033, *2 (D. Utah, Aug. 9, 2017) (only CFPB has authority to enforce the Consumer
 18 Financial Protection Act, which is the statute authorizing the CFPB to enter consent orders); *Beider*
 19 *v. Retrieval Masters Creditors Bureau, Inc.*, 146 F.Supp.3d 465, 472 (E.D. N.Y. 2015) (same). In
 20 light of this clear line of authority, signed CFPB Consent Order acknowledgements are simply not
 21 relevant to Plaintiffs' claims. Regardless, TSI's supplemental response and document production
 22 was reasonably tailored to the CFPB Consent Order acknowledgements signed by persons and
 23 individuals who may have had, at best, some tenuous connection to the affidavits at issue in this
 24 case. Plaintiffs' demand for more is over-broad and unwarranted. Plaintiffs are simply fishing.

1 • **Request for Production No. 40**

2 Plaintiffs' Request for Production No. 40 demands TSI “[p]roduce all documents and
 3 records produced by TSI to the CFPB in response to the CFPB investigation of the NCSLTs and/or
 4 TSI that culminated in the [CFPB Consent Order], that relate to student loan borrowers in
 5 Washington State.” Request No. 40 is Plaintiffs’ attempt to re-word previous document Request
 6 No. 13, which this Court determined was improper.⁵ *See* 7/20/21 Minute Order (Doc. 191).

7 In responding to Request No. 40 originally, TSI incorporated arguments from its Motion
 8 for Protective Order (Docs. 156 and 165) and reminded Plaintiffs of the Court’s order directing
 9 they “make proper discovery requests, identifying the specific categories of relevant documents
 10 sought,” and that they “cannot simply request copies of discovery files made in the course of
 11 another investigation.” *See* 7/20/21 Minute Order (cleaned up) (Doc. 191). TSI’s supplemental
 12 response added that the documents contain confidential information that is the property of the
 13 CFPB and are, therefore, subject to privilege, including, but not limited to, 12 CFR § 1070.2, *et*
 14 *seq.*

15 In their Motion to Compel, Plaintiffs argue TSI’s objections lack merit because, unlike
 16 Request No. 13, which this Court previously ruled was improper, Request No. 40 is limited to
 17 “Washington State student loan borrowers”—as if that qualification, standing alone, solves the
 18 inherent problems with the overbroad and unfettered scope of Plaintiffs’ demand for “all
 19 documents and records produced by TSI to the CFPB.” It does not. As this Court previously
 20 noted, such a request contains “no method of determining *which* of those documents are relevant
 21 or proportional to the needs of this case.” *See* 7/20/21 Minute Order (Doc. 191) (emphasis in
 22 original). Simply inserting a qualifier that the documents to be produced “relate to student loan
 23 borrowers in Washington State,” does not cure this fundamental defect. While it arguably reduces
 24 the *quantity* of potentially responsive documents, it does nothing to focus the discovery to the
 25 relevant subject matter of Plaintiffs’ claims.

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 27 ⁵ Plaintiffs’ Request for Production No. 13 sought “all documents [that TSI] provided [to] the [CFPB] related to the
 findings included in the [CFPB Consent Order].”

1 Moreover, Plaintiffs' indiscriminate request for a copy of an entire production to a
 2 government agency—rather than requesting specific documents or categories of documents
 3 relevant to their FDCPA or CPA claims in this case—is patently overbroad. “[P]laintiffs’ counsel
 4 must do their own work and request the information they seek directly.” *Midwest Gas Services*,
 5 2000 WL 760700 at *1. Repeating what this Court previously mandated, Plaintiffs “cannot simply
 6 request copies of discovery files made in the course of another investigation.” 7/20/21 Minute
 7 Order (Doc. 191). Indeed, “discovery requests that seek duplicates of discovery produced in other
 8 litigation [are] improper as failing to make the requisite showing of relevance.” *King Cty. v.*
 9 *Merrill Lynch & Co.*, 2011 WL 3438491, *2 (W.D. Wash. Aug. 5, 2011). Such “[c]loned
 10 discovery,’ requesting all documents produced or received during other litigation or investigations,
 11 is irrelevant and immaterial unless the fact that particular documents were produced or received
 12 by a party is relevant to the subject matter of the subject case.” *Id.* at *3 (cleaned up) (quoting
 13 *Midwest Gas Servs., Inc. v. Indiana Gas Co.*, 2000 WL 760700, *1 (S.D. Ind. Mar. 7, 2000)). “This
 14 is because, without more, the Court cannot ascertain whether the documents requested actually
 15 relate to Plaintiffs’ claims[.]” *Id.* (emphasis added) (citing *Wollam v. Wright Med. Grp., Inc.*, 2011
 16 WL 1899774, *2 (D. Colo. May 18, 2011)).

17 Plaintiffs’ Motion to Compel also challenges TSI’s privilege assertion that Request No. 40
 18 seeks confidential information that is the property of the CFPB. Plaintiffs argue first that the
 19 application of this privilege was rejected in another case pending in New York, and second that
 20 TSI made the same argument previously in its Motion for Protective Order (Docs. 156 and 165),
 21 and that, in ruling on that motion, this Court “did not adopt it,” thus implying this Court
 22 affirmatively rejected it. These are not serious arguments.

23 Regulations promulgated pursuant to the Consumer Financial Protection Act of 2010
 24 (“CFPA”), 12 U.S.C. § 5481, *et seq.*, enshroud documents produced to the CFPB pursuant to a
 25 Civil Investigative Demand (“CID”) in privilege:
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 27

(f) **Confidential information** means . . . confidential investigative information, and confidential supervisory information . . .⁶

(h) Confidential investigative information means:

(1) Any documentary material, written report, or written answers to questions, tangible thing, or transcript of oral testimony *received by the CFPB in any form or format pursuant to a civil investigative demand*, as those terms are set forth in 12 U.S.C. 5562, *or received by the CFPB voluntarily in lieu of a civil investigative demand*; and

(2) Any other documents, materials, or records . . . received by, or *for the use by the CFPB . . .* in the conduct of enforcement activities, and *any information derived from such materials.*

As such, all documents produced by TSI to the CFPB “in response to the CFPB investigation” are considered “confidential information” pursuant to the CFPA. Moreover, TSI’s assertions of privilege were *mandatory*. Specifically, Section 1070.47(a) (“Further disclosure prohibited”) prohibits TSI from disclosing confidential information:

(1) All confidential information made available under this subpart shall remain the property of the CFPB, unless the General Counsel provides otherwise in writing.

(2) Except as set forth in this subpart, *no supervised financial institution . . . or any other person to whom the confidential information is made available under this subpart, may further disclose such confidential information without the prior written permission of the Director.* 12 C.F.R. § 1070.47(a) (emphasis added).

That a New York federal magistrate may have ordered production of CID materials in other pending litigation is not binding on this Court. And, respectfully, TSI believes that court's ruling was clearly erroneous.

⁶ The reference to “confidential information” is broader than simply documents protected by an asserted privilege under the Federal Rules of Civil Procedure or Federal Rules of Evidence. This makes sense given that the CID process provides broad investigative rights and affords parties subject to a CID substantially less protections than afforded pursuant to the Federal Rules of Civil Procedure. *See* 12 U.S.C. § 5562(c)(13)(D). As the Bureau of Consumer Protection of the Federal Trade Commission (an “agenc[y] with similar authorit[y]” to the CFPB) explained in response to the CFPB’s January 2018 Request for Information regarding CFPB CIDs and associated processes, “unlike federal court discovery that is limited to obtaining information that is relevant to the claims and defenses asserted in the complaint and answer, the FTC is granted broad authority to obtain information to determine whether a violation has occurred and whether an action would be in the public interest … [and] the scope of an FTC investigation is not limited in the same way as federal court discovery.” *Before the Bureau of Consumer Financial Protection*, Docket No. CFPB-2018-0001, 2018 WL 1595605, *11 (Mar. 26, 2018) (citing *FTC v. Texaco, Inc.*, 555 F.2d 862, 871–72 (D.C. Cir. 1977) (en banc)).

1 Moreover, merely because this Court “did not adopt” TSI’s CFPB/privilege arguments
 2 when it considered *and granted* TSI’s earlier Motion for Protective Order regarding Request No.
 3 13 is of no moment. Having determined that Plaintiffs’ earlier document request was improper,
 4 the Court did not need to reach (and consequently did not reach) the merits of TSI’s privilege
 5 assertion at that time. Plaintiffs’ inference that the Court rejected the existence or application of
 6 the CFPB’s privilege under these circumstances crosses a bridge too far.

7 • **Requests for Production Nos. 45 and 46**

8 Plaintiffs’ Requests for Production Nos. 45 and 46 both seek the content of
 9 communications or information TSI *provided to the CFPB* following entry of the CFPB Consent
 10 Order. Paraphrasing, Plaintiffs seek all documents and records relating to TSI’s identification *to*
 11 *the CFPB* of Collections Lawsuits that were filed in Washington State between November 1, 2014
 12 and September 15, 2017, that are missing chain-of-title documentation or a signed credit
 13 agreement.

14 Considering the unfettered scope of Plaintiffs’ request for “all documents and records,”
 15 TSI’s original response asserted the obvious relevancy objections (namely, that the Requests were
 16 overbroad, vague, and ambiguous); and, further, because Plaintiffs sought documents *provided to*
 17 *the CFPB*, TSI asserted the CFPB’s privilege discussed above. Subject to those objections and
 18 privileges assertions, TSI’s original response advised that TSI was withholding from production
 19 information within electronic records that identify certain collections lawsuits; and its
 20 supplemental response further advised TSI is withholding from production a listing of accounts
 21 that was provided to the CFPB.

22 In their Motion to Compel, Plaintiffs again argue the Requests are proper because they are
 23 “limited to documents related to ‘Washington State student loan borrowers.’” As discussed above,
 24 that qualifier does not cure the defect in Plaintiffs’ Requests. Again, the Requests provide “no
 25 method of determining *which* of those documents are relevant or proportional to the needs of this
 26 case.” *See* 7/20/21 Minute Order (Doc. 191) (emphasis in original). Plaintiffs also argue, again,
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1 that the CFPB's privilege has been rejected elsewhere and should be rejected here too, and that the
 2 Court "did not adopt" those privilege arguments when granting TSI's Motion for Protective Order
 3 (Doc. 191). For all of the same reasons explained above with regard to Request for Production 40,
 4 Plaintiffs' arguments are likewise unavailing with regard to Requests for Production Nos. 45 and
 5 46.

6 Moreover, insofar as the CFPB Consent Order required TSI to identify certain lawsuits to
 7 the CFPB and to provide information about those lawsuits to the CFPB, the Requests also invade
 8 a secondary aspect of the CFPB's privilege pertaining to confidential supervisory information.

9 As noted above, "confidential information" includes, not only confidential investigative
 10 information, but also confidential supervisory information. Confidential supervisory information
 11 means:

12 (1) Reports of examination, inspection and visitation, non-public operating,
 13 condition, and *compliance reports*, supervisory letter, or similar document, and *any*
 14 *information contained in, derived from, or related to* such documents;

15 (2) Any documents, materials, or records, including reports of examination,
 16 prepared by, or on behalf of, *or for the use of the CFPB . . . in the exercise of*
 17 *supervisory authority* over a financial institution, and any information derived from
 18 such documents, materials, or records;

19 (3) *Any communications between the CFPB and a supervised financial institution*
 20 *. . . related to the CFPB's supervision of the institution[.]*" 12 C.F.R. § 1070.2(i)
 21 (emphasis added).

22 This privilege includes all information derived from or related to those materials, as well
 23 as communications between the CFPB and a supervised financial institution related to the CFPB's
 24 supervisory activities. *See* CFPB Bull. No. 2015-01, Treatment of Confidential Supervisory
 25 Information (January 27, 2015), available at https://files.consumerfinance.gov/f/201501_cfpb_compliance-bulletin_treatment-of-confidential-supervisory-information.pdf (last visited March
 26 23, 2022).

27 Plaintiffs' Requests for Production Nos. 45 and 46 both seek the content of documents TSI
 28 provided to the CFPB following entry of the CFPB Consent Order and pursuant to the CFPB's

1 Consent Order's requirements. For the reasons explained above, the documents consist of
 2 confidential supervisory information and are, therefore, privileged.

3 Further, and perhaps most importantly, TSI has already produced to Plaintiffs the non-
 4 privileged information they seek. As explained below, Interrogatory Nos. 21 and 24 generally
 5 requested identification of lawsuits filed in Washington with missing chain-of-title documentation
 6 or a signed credit agreement. TSI answered the interrogatories because the interrogatories were
 7 not tied to what TSI communicated to the CFPB, which is in sharp contrast to Requests for
 8 Production Nos. 45 and 46 that are objectionable. Simply put, Plaintiffs got the information they
 9 seek by asking the question properly.

10 • **Request for Production No. 50**

11 Request No. 50 loosely tracks an improper line of questioning Plaintiffs pursued at a recent
 12 re-deposition of TSI's Corporate Representative (as detailed in TSI's Opposition to Plaintiffs'
 13 Motion for Sanctions (Doc. 274) at pp. 17-18), and demands TSI “[p]roduce all documents and
 14 records relating to any notifications by TSI to any law firms, including without limitation P&F, to
 15 cease post-judgment enforcement activity against any Washington State student loan borrower, in
 16 compliance with Paragraph No. 50 of the Consent Order.”

17 TSI objected to the Request (and, likewise, to Plaintiffs' deposition questions) primarily
 18 on the basis that the requested documents were subject to an attorney client privilege. TSI's
 19 original response to the Request advised TSI “is withholding from production internet
 20 communications with counsel.” TSI's supplemental response specifically itemized the 4
 21 responsive communications that are withheld.

22 Confidential communications made by a client to an attorney to obtain legal services are
 23 protected from disclosure. *Fisher v. United States*, 425 U.S. 391, 403, 96 S.Ct. 1569, 1577 (1976);
 24 *Clarke v. American Commerce Nat. Bank*, 974 F.2d 127, 129 (9th Cir. 1992); *United States v.*
 25 *Hirsch*, 803 F.2d 493, 496 (9th Cir. 1986). The “essence of the attorney/client relationship is
 26 whether the attorney's *advice or assistance* is sought and received on legal matters.” *Bohn v.*
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1 *Cody*, 119 Wash.2d 357, 363, 832 P.2d 71 (1992) (emphasis added). The purpose of the attorney-
 2 client privilege “is to encourage full and frank communication between attorneys and their clients,”
 3 recognizing “that sound legal advice or advocacy serves public ends and that such advice or
 4 advocacy depends upon the lawyer’s being fully informed by the client.” *Upjohn Co. v. United*
 5 *States*, 449 U.S. 383, 389 (1981). Consequently, correspondence that reveals the client’s motive
 6 to seek representation, litigation strategy, or the *specific* nature of services provided fall within the
 7 privilege. *See Clarke*, 974 F.2d at 129 (emphasis in original); *see also In re Grand Jury Witness*,
 8 695 F.2d 359, 361–362 (9th Cir. 1982). The privilege exists when: (1) legal advice of any kind is
 9 sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating
 10 to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently
 11 protected (7) from disclosure by himself or by the legal adviser, (8) unless the protection be
 12 waived. *OTR Wheel Eng’g, Inc. v. W. Worldwide Servs., Inc.*, 2015 WL 11117170, *2 (E.D. Wash.
 13 Aug. 5, 2015), citing *United States v. Richey*, 632 F.3d 559, 566 (9th Cir. 2011).

14 In their Motion to Compel, Plaintiffs contend the 4 communications at issue “do not appear
 15 to have anything to do with requests for legal advice.” But, by the very terms of the Request for
 16 “notifications by TSI . . . to cease post-judgment enforcement activity,” Plaintiffs sought
 17 communications by TSI to P&F specifically regarding the strategy for further handling of active
 18 litigation P&F was then handling on behalf of the Defendant Trusts. There is no reasonable dispute
 19 the content of those communications concern litigation strategy and the specific legal services to
 20 be provided or withdrawn. *See Clarke*, 974 F.2d at 129; *see also Bell v. Ken Lee*, 2017 WL
 21 1956828, *3 (N.D. Cal. May 11, 2017) (finding that invoices and agreements such as
 22 correspondence, bills, ledgers, statements, and time records which similarly reveal the motive of
 23 the client in seeking representation, litigation strategy, or the specific nature of the services
 24 provided fall within the attorney-client privilege).

25 There is likewise no doubt the attorney-client privilege applies to TSI under these
 26 circumstances. As this Court previously held in this case,
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1 [T]he “attorney-client privilege extends to third parties indispensable to an
 2 attorney’s provision of legal services to the client” *Greenlake Condo. Assoc.*
 3 *v. Allstate Ins. Co.*, No. 14-CV-01860, 2015 WL 11921419, at *2 (W.D. Wash. Oct.
 4 30, 2015) (quoting *State v. Aquino-Cervantes*, 88 Wn. App. 699, 771, 945 P.2d 767
 5 (1997)). The Court concludes that P&F could not represent the Trusts Defendants
 6 without communicating with TSI. 2/8/22 Minute Order, (Doc. 258).

7 Plaintiffs’ Motion to Compel attempts to invade privileged written communications
 8 between TSI and P&F regarding P&F’s provision of legal services for the Defendant Trusts;
 9 therefore, the motion should be denied.

10 • **Interrogatory Nos. 21 and 24**

11 As noted above, Interrogatory No. 21 generally requested TSI identify lawsuits filed in
 12 Washington state court in which chain-of-title documentation or a signed credit agreement was
 13 missing. TSI initially objected to Interrogatory No. 21 on various grounds, but, nevertheless,
 14 answered it, as follows:

15 TSI has determined that since TSI assumed its role as Special Subservicer for the 6
 16 Defendant Trusts in November 2014, three lawsuits may have been commenced
 17 (but subsequently abandoned or dismissed) against Washington consumers in
 18 which certain assignment documentation is not within TSI’s possession as Special
 19 Subservicer for the applicable Defendant Trust(s). However, in no case are the
 20 relevant loan schedules missing. Further answering, TSI identified zero lawsuits
 21 commenced against Washington consumers in which the signed credit agreement
 22 instruments by which the loans were originated were not contained among the
 23 respective Defendant Trust’s records within TSI’s possession as Special
 24 Subservicer at the time the lawsuits were commenced.

25 Following the parties’ March 17, 2022 discovery conference, TSI provided a listing
 26 containing known suit information on each of the 3 lawsuits TSI identified.

27 Paraphrasing, Interrogatory No. 24, requested TSI identify lawsuits filed in Washington
 1 state court for which the Defendant Trusts’ lawyers sought to remove, withdraw, or terminate post-
 2 judgment enforcement activities in compliance with the CFPB Consent Order. TSI initially
 3 objected to the Interrogatory based upon several grounds, but following the parties’ March 17,
 4 2022 discovery conference, TSI provided a listing containing known suit information on the 10
 5 lawsuits TSI identified as having been removed, withdrawn, or terminated.

1 In their Motion to Compel, Plaintiffs argue, “the list of cases TSI provided . . . contain
 2 erroneous information, such as ‘case numbers’ that are not valid case numbers.” But, in
 3 undersigned counsel’s March 28, 2022 response to Plaintiffs’ request for additional information
 4 regarding the listed matters, TSI advised the company had provided all case docket information in
 5 its possession and referred Plaintiffs’ counsel to co-Defendant P&F, who was the attorney of
 6 record for each listed case. It appears Plaintiffs made no attempt to gather any further information
 7 regarding the listed matters from P&F and simply filed their Motion to Compel instead.

8 • **Interrogatory No. 6 (from Plaintiffs’ First Interrogatories to TSI)**

9 Plaintiffs’ argument regarding Interrogatory No. 6 is nonsensical.

10 Interrogatory No. 6 requests TSI “[l]ist the name, address, and telephone number of each
 11 person having any knowledge of facts regarding and/or related to Plaintiffs’ claims asserted against
 12 Defendants in this action.” This is a simple request for TSI to identify the individuals *TSI believes*
 13 have relevant information; so in response, TSI identified 3 individuals who, to the best of *TSI’s*
 14 *belief*, “have knowledge” of the facts and allegations in Plaintiffs’ lawsuit, and 13 individuals—
 15 primarily consisting of TSI employees who signed or notarized an affidavit in connection with the
 16 Defendant Trusts’ collection litigation against Plaintiffs—who TSI reasonably believes “might
 17 have knowledge” of Plaintiffs’ claims. No “hiding of the ball;” just a party-defendant identifying
 18 who *it believes* has or may have relevant information.

19 But that’s not enough for Plaintiffs because their lawyers think others may have some
 20 information *Plaintiffs or their lawyers believe* is relevant. In a bizarre argument, Plaintiffs
 21 apparently contend TSI must be compelled to identify as persons with knowledge of Plaintiffs’
 22 claims every TSI employee who signed an affidavit that was filed in Washington state court during
 23 the class period. Nonsense. If Plaintiffs believe that those affiants—whom TSI identified in its
 24 answer to another interrogatory—or other any individuals have what Plaintiffs or their lawyers
 25 believe to be relevant information, Plaintiffs were free to depose such individuals. Plaintiffs’
 26 Motion to Compel on this basis should be denied.

- **Plaintiffs Are Not Entitled to Attorneys' Fees**

Plaintiffs' Motion to Compel is meritless and should be denied, negating any award of attorneys' fees. But even if the Court determines TSI's discovery responses should be supplemented, the foregoing demonstrates TSI's objections, responses, and privilege assertions were reasonable and asserted in good faith, again making any attorney fee awarded unwarranted. Finally, Plaintiffs' claim for attorneys' fees on the false assertion TSI "simply refused to confer" should be rejected. As explained above, if Plaintiffs' counsel truly believed further discussion beyond the parties' March 17 discovery conference was necessary or might be fruitful, counsel could have heeded the undersigned's stated willingness to continue those discussions.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs' Motion to Compel should be DENIED.

Dated: April 18, 2022

By: /s/ Justin H. Homes
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CERTIFICATE OF SERVICE

I hereby certify under the penalty of perjury under the laws of the United States that on the date below I electronically filed with the Clerk of Court the foregoing Transworld Systems Inc.'s Opposition to Plaintiffs' Motion To Compel Discovery using the Court's Case Management/Electronic Case Filing System, which will send notification of such filing to all counsel of record.

Dated: April 18, 2022

By: /s/ Justin H. Homes
Justin H. Homes

TRANSWORLD SYSTEMS INC.'S
OPPOSITION TO PLAINTIFFS' MOTION
TO COMPEL DISCOVERY 17

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